

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS F. BANGASSER, an
individual, and derivatively on behalf
of Nominal Defendants MIDTOWN
LIMITED PARTNERSHIP and
MIDTOWN COMMUNITY LAND
TRUST,

Plaintiffs,

v.

HUGH F. BANGASSER, an
individual, K&L GATES, STEPHEN
J. SIRIANNI, an individual, ANN E.
MERRYFIELD, an individual,
CHRIS R. YOUTZ, an individual,
RICHARD E. SPOONEMORE, an
individual, SIRIANNI YOUTZ
SPOONEMORE HAMBURGER,
DAVIS WRIGHT TREMAINE LLP,
and GREGORY FRANKLIN
ADAMS, an individual,

Defendants,

CASE NO. C19-66 RAJ

**ORDER DENYING
DEFENDANTS' MOTION
FOR ATTORNEYS' FEES**

1 This matter comes before the Court on Defendants' Motion for Attorneys' Fees.
2 Dkt. # 26. For the reasons set forth below, the Court **DENIES** Defendants' Motion.

3 District courts have broad discretion to determine the reasonableness of fees.
4 *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). Defendants first argue that
5 attorneys' fees are appropriate under 28 U.S.C. § 1927 because of Plaintiff's
6 unreasonable proliferation of this litigation. *See* Dkt. # 26 at 3. Under 28 U.S.C. § 1927,
7 any litigant who "multiplies the proceedings in any case unreasonably and vexatiously"
8 may be required to pay excess costs, expenses and attorneys' fees incurred as a result of
9 that conduct. 28 U.S.C. § 1927. "Sanctions pursuant to section 1927 must be supported
10 by a finding of bad faith." *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1306
11 (9th Cir. 1989). While sanctions would act as a deterrent against future attempts by
12 Plaintiff to bring this lawsuit again, the Court finds that there is insufficient evidence to
13 support a finding of bad faith in these proceedings. However, the Court strongly cautions
14 Plaintiff against further efforts to bring this action in federal court without a reasonable
15 basis for jurisdiction.

16 Next, Defendants contend that they are entitled to attorneys' fees under the
17 Partnership Agreement at issue in this case which grants the "prevailing party"
18 reasonable attorneys' fees in any litigation arising from the Agreement. Dkt. # 26 at 3;
19 Dkt. # 27, Ex. H. The Court disagrees. In the context of awarding attorneys' fees to a
20 "prevailing party," the Ninth Circuit has stated that a dismissal without prejudice does
21 "not confer prevailing party status upon [a party]." *Oscar v. Alaska Dep't of Educ. &*
22 *Early Dev.*, 541 F.3d 978, 981 (9th Cir. 2008). Here, the Court dismissed Plaintiff's
23 complaint *without prejudice*, citing a lack of subject matter jurisdiction. Dkt. # 24. In
24 addition, the fact that the Court lacks jurisdiction over this action expressly precludes it
25 from making any determination regarding the merits of the underlying claims. *Idea*
26 *Place Corp. v. Fried*, 390 F. Supp. 2d 903, 904 (N.D. Cal. 2005). Indeed, the Court's
27 dismissal for lack of jurisdiction in federal court does not foreclose the possibility that

1 Plaintiff may succeed on its claims in state court. As such, the “prevailing party”
2 provision of the Partnership Agreement does not apply.

3 Finally, Defendants argue that Plaintiff has willfully abused the judicial process
4 and may be sanctioned under Fed. R. Civ. P. 11. Under Rule 11, a court may impose an
5 appropriate sanction on a party that has presented to the court a written motion for any
6 improper purpose. Fed. R. Civ. P. 11(c)(1). Rule 11 sanctions are not justified in this
7 case. *See* Fed. R. Civ. P. 11(c)(1). Although the Court is sympathetic to Defendants’
8 frustration in the delays caused by Plaintiff’s actions, the Court declines to issue
9 sanctions on Plaintiff for bad faith or willful abuse of the judicial process.

10 For the foregoing reasons, Defendants’ Motion for Attorneys’ Fees is **DENIED**.
11 Dkt. # 26.

12 Dated this 3rd day of December, 2019.
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16 The Honorable Richard A. Jones
17 United States District Judge
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